IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CRIMINAL APPLICATION No 283 of 1996

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT
VERSUS
DR. KANAIYALAL CHANDULAL MODI

Appearance:
MR SAMIR DAVE, APP, for Petitioner
None present for Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 24/11/2000

C.A.V. JUDGMENT

1. Heard the learned counsel for the petitioner and perused the order impugned passed by the Designated

Court, Valsad at Navsari on 9th August, 1995 below Ex. 42 in Special Case No.1 of 1995. The respondent accused is alleged to have committed the offence under the Indian Penal Code, Arms Act, Explosives Substance Act and TADA by abetting and providing help to the other accused at present after being arrested, are in jail. He filed an application to the Designated Court praying therein for grant of permission to him for having food or type of food he is accustomed from his nearest relatives or family members. This prayer was granted by the learned Designated Court, Valsad at Navsari. The operative part of the order reads as under:

1.(a) The application is allowed.

(b) The jailor shall permit Dr. Mody to have the food of his choice and for the purpose, permit him to have the tiffin from his nearest relative or family members. The jail authority soon after receiving the tiffin in the best possible way, get it tested or may get is tested as stated above, and then if everything is found in order, may then pass on the tiffin to Dr. Mody for his consumption. If the person bringing the tiffin eats a little, the jail authority shall wait for reasonable time so as to check up the effect and then shall hand over the tiffin to Dr. Mody for his use. It would be within the discretion of the jail authority to refuse to pass on the tiffin to Dr. Mody if at particular point of time, there is a reason to believe about the mischief having been played and in that case, Dr. Mody will have to satisfy with the food provided by the jail authority.

2. The learned Designated Court held that the prisoner accustomed to particular living or a food and thereby he is taking care of his health, but the food provided in the jail is not suitable to his health, certainly, he should be provided with food of his choice and permitted to have tiffin from his relatives or the family members. This finding given by the learned Designated Court cannot be accepted. It is not unknown that if such a liberty is granted lightly to the prisoners it may adversely affect the functioning of the jails as well as there is all possibility that many other things may get entry inside the jail. It is said that the prisoners arrange all the facilities in the jail i.e. food of their liking and many other things of comforts and luxuries with the connivance of the jail officers. In the jail position will be worst where the prisoners' prayer as what it is made by the respndent is liberally granted by the Court. It is easy to say by a prisoner that the food provided in the jail is not

suitable to his health. The learned Designated Court has not referred any material nor has given any finding that the food provided in the jail is not suitable to the health of the respondent. Without there being any material and finding, the Designated Court has extended this facility to the respondent which is wholly perverse. In such matter, the Designated Court should have taken the expert's opinion and only after recording satisfaction after considering the expert's opinion and other material produced on the record, there would have some justification to grant this indulgence to the respondent and in routine or as of rule or right. This facility has been extended to the respondent as if it is a right of the prisoner to have the tiffin from his relatives or family members. Only on this basis, if this facility is extended to the prison then all the prisoners will get it as of right and rule.

3. The petition was admitted after notice to the respondent on 18th January, 1997 and interim relief in terms of para-8(b) has been granted. The order of the learned Designated court remained under stay for all these years and this facility as provided under the impugned order is not available to the respondent. The respondent has not made any complaint during this period to the Court nor produced any material to show that because of the food provided in the jail, his health or other conditions have adversely affected.

4. Learned counsel for the petitioner relied on the decision of this Court in special criminal application NO.725/93 decided on 22nd September, 1993. After going through the judgment of the Court aforesaid, I find that the jail authorities have issued circulars dated 27th April, 1993 and 21st June, 1993. Under these two circulars, the facilities to receive food from home and interview with the accused by the members of the family once in a week has been withdrawn. These two circulars have not been taken note of by the learned Designated Court while making the impugned order. However, for this, the blame lies with the learned advocate who appeared for the State before the Designated Court. It is his duty to bring these circulars to the notice of the learned Designated Court. However, in the presence of these circulars, the validity of which has not been challenged by the respondents and the same was held to be valid by this Court in the judgment aforesaid, otherwise also, the order of the learned Designated Court cannot be allowed to stand.

5. As a result of the aforesaid discussion, this

petition succeeds and the same is allowed and the order of the learned Designated Court, Valsad at Navsari dated 9th August, 1995 below Ex. 42 in special case No.1 of 1995 is quashed and set aside. Rule is made absolute.

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